

ASSEMBLY BILL

No. 1715

Introduced by Assembly Member Patterson

February 13, 2014

An act to amend Sections 1203 and 1203.085 of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1715, as introduced, Patterson. Probation: felons: disqualifying circumstances.

Existing law defines probation to mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. Existing law authorizes probation for some, but not all, felony convictions. Existing law prohibits granting probation for a felony conviction for, among other instances, a person who is convicted of a violent felony or a serious felony and who was on probation or parole for a felony offense at the time of the commission of the new felony offense.

This bill would similarly make that probation unavailable to a person who is convicted of a violent felony or a serious felony and who was on mandatory supervision or postrelease community supervision for a felony offense at the time of the commission of the new felony offense.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, “probation” means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, “conditional sentence” means the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) (1) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment.

(2) (A) The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted.

(B) Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation.

(C) If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Sections 290 to 290.023, inclusive, or if the probation report recommends that registration be ordered at sentencing pursuant to Section 290.006, the probation officer’s report shall include the results of the

1 State-Authorized Risk Assessment Tool for Sex Offenders
2 (SARATSO) administered pursuant to Sections 290.04 to 290.06,
3 inclusive, if applicable.

4 (D) The probation officer may also include in the report his or
5 her recommendation of both of the following:

6 (i) The amount the defendant should be required to pay as a
7 restitution fine pursuant to subdivision (b) of Section 1202.4.

8 (ii) Whether the court shall require, as a condition of probation,
9 restitution to the victim or to the Restitution Fund and the amount
10 thereof.

11 (E) The report shall be made available to the court and the
12 prosecuting and defense attorneys at least five days, or upon request
13 of the defendant or prosecuting attorney nine days, prior to the
14 time fixed by the court for the hearing and determination of the
15 report, and shall be filed with the clerk of the court as a record in
16 the case at the time of the hearing. The time within which the report
17 shall be made available and filed may be waived by written
18 stipulation of the prosecuting and defense attorneys that is filed
19 with the court or an oral stipulation in open court that is made and
20 entered upon the minutes of the court.

21 (3) At a time fixed by the court, the court shall hear and
22 determine the application, if one has been made, or, in any case,
23 the suitability of probation in the particular case. At the hearing,
24 the court shall consider any report of the probation officer,
25 including the results of the SARATSO, if applicable, and shall
26 make a statement that it has considered the report, which shall be
27 filed with the clerk of the court as a record in the case. If the court
28 determines that there are circumstances in mitigation of the
29 punishment prescribed by law or that the ends of justice would be
30 served by granting probation to the person, it may place the person
31 on probation. If probation is denied, the clerk of the court shall
32 immediately send a copy of the report to the Department of
33 Corrections and Rehabilitation at the prison or other institution to
34 which the person is delivered.

35 (4) The preparation of the report or the consideration of the
36 report by the court may be waived only by a written stipulation of
37 the prosecuting and defense attorneys that is filed with the court
38 or an oral stipulation in open court that is made and entered upon
39 the minutes of the court, except that a waiver shall not be allowed
40 unless the court consents thereto. However, if the defendant is

1 ultimately sentenced and committed to the state prison, a probation
2 report shall be completed pursuant to Section 1203c.

3 (c) If a defendant is not represented by an attorney, the court
4 shall order the probation officer who makes the probation report
5 to discuss its contents with the defendant.

6 (d) If a person is convicted of a misdemeanor, the court may
7 either refer the matter to the probation officer for an investigation
8 and a report or summarily pronounce a conditional sentence. If
9 the person was convicted of an offense that requires him or her to
10 register as a sex offender pursuant to Sections 290 to 290.023,
11 inclusive, or if the probation officer recommends that the court,
12 at sentencing, order the offender to register as a sex offender
13 pursuant to Section 290.006, the court shall refer the matter to the
14 probation officer for the purpose of obtaining a report on the results
15 of the State-Authorized Risk Assessment Tool for Sex Offenders
16 administered pursuant to Sections 290.04 to 290.06, inclusive, if
17 applicable, which the court shall consider. If the case is not referred
18 to the probation officer, in sentencing the person, the court may
19 consider any information concerning the person that could have
20 been included in a probation report. The court shall inform the
21 person of the information to be considered and permit him or her
22 to answer or controvert the information. For this purpose, upon
23 the request of the person, the court shall grant a continuance before
24 the judgment is pronounced.

25 (e) Except in unusual cases where the interests of justice would
26 best be served if the person is granted probation, probation shall
27 not be granted to any of the following persons:

28 (1) Unless the person had a lawful right to carry a deadly
29 weapon, other than a firearm, at the time of the perpetration of the
30 crime or his or her arrest, any person who has been convicted of
31 arson, robbery, carjacking, burglary, burglary with explosives,
32 rape with force or violence, torture, aggravated mayhem, murder,
33 attempt to commit murder, trainwrecking, kidnapping, escape from
34 the state prison, or a conspiracy to commit one or more of those
35 crimes and who was armed with the weapon at either of those
36 times.

37 (2) Any person who used, or attempted to use, a deadly weapon
38 upon a human being in connection with the perpetration of the
39 crime of which he or she has been convicted.

1 (3) Any person who willfully inflicted great bodily injury or
2 torture in the perpetration of the crime of which he or she has been
3 convicted.

4 (4) Any person who has been previously convicted twice in this
5 state of a felony or in any other place of a public offense which,
6 if committed in this state, would have been punishable as a felony.

7 (5) Unless the person has never been previously convicted once
8 in this state of a felony or in any other place of a public offense
9 which, if committed in this state, would have been punishable as
10 a felony, any person who has been convicted of burglary with
11 explosives, rape with force or violence, torture, aggravated
12 mayhem, murder, attempt to commit murder, trainwrecking,
13 extortion, kidnapping, escape from the state prison, a violation of
14 Section 286, 288, 288a, or 288.5, or a conspiracy to commit one
15 or more of those crimes.

16 (6) Any person who has been previously convicted once in this
17 state of a felony or in any other place of a public offense which,
18 if committed in this state, would have been punishable as a felony,
19 if he or she committed any of the following acts:

20 (A) Unless the person had a lawful right to carry a deadly
21 weapon at the time of the perpetration of the previous crime or his
22 or her arrest for the previous crime, he or she was armed with a
23 weapon at either of those times.

24 (B) The person used, or attempted to use, a deadly weapon upon
25 a human being in connection with the perpetration of the previous
26 crime.

27 (C) The person willfully inflicted great bodily injury or torture
28 in the perpetration of the previous crime.

29 (7) Any public official or peace officer of this state or any city,
30 county, or other political subdivision who, in the discharge of the
31 duties of his or her public office or employment, accepted or gave
32 or offered to accept or give any bribe, embezzled public money,
33 or was guilty of extortion.

34 (8) Any person who knowingly furnishes or gives away
35 phencyclidine.

36 (9) Any person who intentionally inflicted great bodily injury
37 in the commission of arson under subdivision (a) of Section 451
38 or who intentionally set fire to, burned, or caused the burning of,
39 an inhabited structure or inhabited property in violation of
40 subdivision (b) of Section 451.

1 (10) Any person who, in the commission of a felony, inflicts
2 great bodily injury or causes the death of a human being by the
3 discharge of a firearm from or at an occupied motor vehicle
4 proceeding on a public street or highway.

5 (11) Any person who possesses a short-barreled rifle or a
6 short-barreled shotgun under Section 33215, a machinegun under
7 Section 32625, or a silencer under Section 33410.

8 (12) Any person who is convicted of violating Section 8101 of
9 the Welfare and Institutions Code.

10 (13) Any person who is described in subdivision (b) or (c) of
11 Section 27590.

12 (f) When probation is granted in a case which comes within
13 subdivision (e), the court shall specify on the record and shall enter
14 on the minutes the circumstances indicating that the interests of
15 justice would best be served by that disposition.

16 (g) If a person is not eligible for probation, the judge shall refer
17 the matter to the probation officer for an investigation of the facts
18 relevant to determination of the amount of a restitution fine
19 pursuant to subdivision (b) of Section 1202.4 in all cases where
20 the determination is applicable. The judge, in his or her discretion,
21 may direct the probation officer to investigate all facts relevant to
22 the sentencing of the person. Upon that referral, the probation
23 officer shall immediately investigate the circumstances surrounding
24 the crime and the prior record and history of the person and make
25 a written report to the court of his or her findings. The findings
26 shall include a recommendation of the amount of the restitution
27 fine as provided in subdivision (b) of Section 1202.4.

28 (h) If a defendant is convicted of a felony and a probation report
29 is prepared pursuant to subdivision (b) or (g), the probation officer
30 may obtain and include in the report a statement of the comments
31 of the victim concerning the offense. The court may direct the
32 probation officer not to obtain a statement if the victim has in fact
33 testified at any of the court proceedings concerning the offense.

34 (i) A probationer shall not be released to enter another state
35 unless his or her case has been referred to the Administrator of the
36 Interstate Probation and Parole Compacts, pursuant to the Uniform
37 Act for Out-of-State Probationer or Parolee Supervision (Article
38 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part
39 4) and the probationer has reimbursed the county that has
40 jurisdiction over his or her probation case the reasonable costs of

1 processing his or her request for interstate compact supervision.
2 The amount and method of reimbursement shall be in accordance
3 with Section 1203.1b.

4 (j) In any court where a county financial evaluation officer is
5 available, in addition to referring the matter to the probation officer,
6 the court may order the defendant to appear before the county
7 financial evaluation officer for a financial evaluation of the
8 defendant's ability to pay restitution, in which case the county
9 financial evaluation officer shall report his or her findings regarding
10 restitution and other court-related costs to the probation officer on
11 the question of the defendant's ability to pay those costs.

12 Any order made pursuant to this subdivision may be enforced
13 as a violation of the terms and conditions of probation upon willful
14 failure to pay and at the discretion of the court, may be enforced
15 in the same manner as a judgment in a civil action, if any balance
16 remains unpaid at the end of the defendant's probationary period.

17 (k) Probation shall not be granted to, nor shall the execution of,
18 or imposition of sentence be suspended for, any person who is
19 convicted of a violent felony, as defined in subdivision (c) of
20 Section 667.5, or a serious felony, as defined in subdivision (c) of
21 Section 1192.7, and who was on probation for a felony offense at
22 the time of the commission of the new felony offense.

23 *(l) Probation shall not be granted to, nor shall the execution*
24 *of, or imposition of sentence be suspended for, any person who is*
25 *convicted of a violent felony, as defined in subdivision (c) of Section*
26 *667.5, or a serious felony, as defined in subdivision (c) of Section*
27 *1192.7, and who was on mandatory supervision for a felony offense*
28 *at the time of the commission of the new felony offense.*

29 SEC. 2. Section 1203.085 of the Penal Code is amended to
30 read:

31 1203.085. (a) Any person convicted of an offense punishable
32 by imprisonment in the state prison but without an alternate
33 sentence to a county jail shall not be granted probation or have the
34 execution or imposition of sentence suspended, if the offense was
35 committed while the person was on parole from state prison
36 pursuant to Section 3000, following a term of imprisonment
37 imposed for a violent felony, as defined in subdivision (c) of
38 Section 667.5, or a serious felony, as defined in subdivision (c) of
39 Section 1192.7.

1 (b) Any person convicted of a violent felony, as defined in
2 subdivision (c) of Section 667.5, or a serious felony, as defined in
3 subdivision (c) of Section 1192.7, shall not be granted probation
4 or have the execution or imposition of sentence suspended, if the
5 offense was committed while the person was on parole from state
6 prison pursuant to Section 3000.

7 *(c) Any person convicted of a violent felony, as defined in*
8 *subdivision (c) of Section 667.5, or a serious felony, as defined in*
9 *subdivision (c) of Section 1192.7, shall not be granted probation*
10 *or have the execution or imposition of sentence suspended, if the*
11 *offense was committed while the person was on postrelease*
12 *community supervision from state prison pursuant to Section*
13 *3000.08.*

14 (e)

15 (d) The existence of any fact that would make a person ineligible
16 for probation under subdivision (a) ~~or~~, (b), *or* (c) shall be alleged
17 in the information or indictment, and either admitted by the
18 defendant in open court, or found to be true by the jury trying the
19 issue of guilt or by the court where guilt is established by plea of
20 guilty or nolo contendere or by trial by the court sitting without a
21 jury.